



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2004

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2004-10962

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215894.

The City of Longview (the "city") received two requests for information: the first for handwritten letters from a councilwoman to other council members and the city manager, as well as any e-mail correspondence that was released in response to an open records request to the city, and the second for the same handwritten letters. You state you have released some of the requested information, but claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.109, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.109 excepts from public disclosure "[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]" Gov't Code § 552.109. This office has held that the test to be applied to information under section 552.109 is the same as the test adopted in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), with regard to common law privacy as incorporated by section 552.101 of the Government Code.¹ See Open Records Decision No. 506 at 3 (1988). Accordingly, we will consider your section 552.101 and section 552.109 claims together.

¹Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by the common law right to privacy.

In *Industrial Foundation*, the Texas Supreme Court held that common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We note that some of the information the city seeks to withhold does not identify the individual at issue and, thus, does not implicate the privacy interests of any identifiable person. In addition, we find that the remaining information at issue is not highly intimate or embarrassing. Therefore, having considered your arguments and reviewed the information at issue, we find that none of the information at issue is protected under common law privacy, and none of it may be withheld under section 552.101 or 552.109 on that basis.

Next, we note that the submitted records include information that may be protected by section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who timely request that such information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received by a governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, pursuant to section 552.117(a)(1), the department must withhold the above-listed information for the city official if the official elected, prior to the city's receipt of the requests, to keep such information confidential. The city may not withhold this information under section 552.117 if a timely election was not made. We have marked the information that must be withheld if section 552.117 applies.

Finally, you note that the submitted information includes e-mail addresses of members of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. In addition, section 552.137 does not apply to a business's general e-mail address.

We note that the e-mail addresses you have marked include work e-mail addresses of government employees and general e-mail addresses of businesses. The city may not withhold these types of e-mail addresses, which we have marked, under section 552.137. In addition, you have identified members of the public who have affirmatively consented to the release of their e-mail addresses; therefore, you may not withhold these addresses under section 552.137. However, the city must withhold the remaining e-mail addresses you have marked, unless the city receives consent for their release.

To conclude, the city must withhold the marked 552.117 information if the official timely elected to keep that information confidential. In addition, the e-mail addresses of individual members of the public must be withheld under section 552.137, unless the individuals to whom the e-mail addresses belong have affirmatively consented to their public disclosure. The city must release the remaining information at issue.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

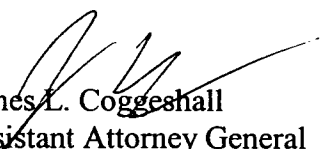
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sdk

Ref: ID# 215894

Enc. Submitted documents

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